EXHIBIT D

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

RAYMOND B. FARMER	:	Case No. 10-40269
DIANE P. FARMER,		
	:	Chapter 11
Debtors.		
	:	Charlotte, North Carolina
		Wednesday, December 15, 2010
	:	9:52 a.m.

: :

TRANSCRIPT OF FIFTH CONTINUED HEARING ON MOTIONS
FOR RELIEF FROM STAY AND DEBTORS' RESPONSE;
HEARING ON DEBTORS' AMENDED DISCLOSURE
STATEMENT AND OBJECTIONS THERETO
BEFORE THE HONORABLE GEORGE R. HODGES,
UNITED STATES BANKRUPTCY JUDGE

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P R O C E E D I N G S

THE COURT: All right. Now we'll go to Raymond and Diane Farmer.

Why don't we start with the announcements over here (indicating) on the debtors' side and go across that (indicating) ways.

MR. HOUSTON: Your Honor, Andy Houston, Tom Moon, and Richard Wright are all here on behalf of the debtors this morning.

MR. FLETCHER: May it please the Court, I'm John Fletcher representing First South Bank, one of the creditors. I'm sitting over here to find a seat, but I'm present with the creditors.

THE COURT: Okay.

All right, Mr. Henderson.

MR. HENDERSON: Jim Henderson on behalf of First National Bank of Shelby.

THE COURT: Okay.

MR. UNDERWOOD: Matt Underwood on behalf of EMC Mortgage Corporation.

MR. ESSER: Will Esser and Ashley Edwards on behalf of Palmetto Bank.

MR. NICHOLS: Your Honor, Keith Nichols standing in for Kristin Ogburn on behalf of Land Rover Capital Group, World Omni Financial, and I'm standing in for Mark Pinkston on behalf

of Toby Tomblin and the Estate of Janet Tomblin.

MR. SPENCER: Louis Spencer on behalf of First National Bank of the South.

MR. PULLIAM: Your Honor, Jim Pulliam on behalf of 1230 Overbrook Drive Holdings, LLC and CBA-Mezzanine Capital Finance, and U.S. Bank, N.A., in its capacity as trustee.

MR. PEARCE: Good morning, Your Honor. Brad Pearce on behalf of Inland.

THE COURT: All right.

MS. DORNBLAZER: Ann Dornblazer, Bankruptcy Administrator's Office.

THE COURT: Okay. We'll proceed then.

MR. HOUSTON: Your Honor, initially, I would just like to announce Mr. Pulliam and I spoke beforehand. There are two stay relief motions on. I'll let him speak to this, if I misstate this. We have agreed to move those to, to January when the valuation hearings are set on his respective properties.

THE COURT: Okay.

MR. PULLIAM: That's right.

THE COURT: All right.

MR. HOUSTON: Okay.

And moving forward, we are here on the disclosure statement and to begin, I think it's important to understand. This is a disclosure statement hearing. It's not a

confirmation hearing. There have been certain objections filed. I don't think it's appropriate to turn this into a confirmation hearing and the standard is pretty clear in reviewing a disclosure statement. It's cited in both objections and the response that we filed. We need to provide adequate information to creditors. That's defined in 1125. It means we need to provide information that a reasonable hypothetical investor would need to evaluate voting yea or nay on the plan. It's pretty clear. I think everybody agrees on that.

What is also clear is that there was an order entered in this court very early on in this case that's become a point of controversy between, essentially, three creditors and the debtor and not really any of the other creditors and that was the Court's single-asset order and we filed a response on Monday. And if the Court had a chance to review it, I'm not going to repeat many of the factual underpinnings, as well as the legal arguments contained in that brief and response.

THE COURT: No, have not looked at that so you better repeat them.

MR. HOUSTON: Okay.

Starting off, the -- very early in this case there was a substantial hearing on the debtors' interim motion to use cash collateral. At the conclusion of the final hearing on that matter the Court suggested that it wondered if we ought to

be going by single-asset rules with respect to certain properties that would have been single-asset properties before the case and absent the pre-petition transfers. Palmetto Bank filed a motion, which requested, essentially, the same relief and, and asked for some others.

We had a hearing on the matter. There were certain arguments that were raised and notably, Palmetto argued that the transfers should be deemed void as fraudulent transfers under South Carolina law, deemed -- they also argued that the absolute priority rule should apply and they argued that the Court should apply, in essence, 362(d)(3), the 90-day rule, for the debtors to either file a plan or commence making non-default contract interest payments at the value of the collateral.

After all the parties were heard, I think the Court made it very clear it was not addressing the absolute priority rule, it was not addressing the issue of fraudulent transfers and, in fact, stated that anyone who wanted to pursue that could, could bring an adversary proceeding, which is the proper vehicle to contest the transfers, and the Court entered the order stating that it would require 362(d)(3) to apply, it would require separate administration of the assets and liabilities of both the individual debtors and the entities as if the pre-petition transfers had not occurred, and that it would require other administrative things such as filing

separate schedules, provide clarity. It would provide -- we would also provide separate accountings, separate voting, separate other administrative functions, and I think the, the real point of that order was to provide clarity to everyone in this case: What goes where with what; who were the creditors of which entity prepetition; who were the creditors of the individual debtors.

And I submit to you that the disclosure statement that we provided does that. I think it's very clear that it defines, describes the pre-petition transfers. It segregates everything by POD, as I like to refer to, which was by the individuals or by the pre-petition entities. It also provides a liquidation analysis on an, for entity and individual basis. It provides information to creditors as to pending and potential adversary proceedings. It gives a very thorough detail of the many motions and fights we've had in this case and most importantly, it contains charts and attaches the plan that summarizes the plan treatment of claims of, against the individual debtors and then each former entity.

And if I could approach the bench, Your Honor?

THE COURT: Yeah.

MR. HOUSTON: Your Honor, I've handed up what we call Debtors' Exhibit 1 for the purpose of this hearing and for demonstrative purposes it was attached as Exhibit E to the disclosure statement. It identifies claims treatment as of,

creditors, as of the former Wildewood Apartments, LLC and I think it -- this has various classes -- I think it, it evidences a number of objections that are going to be raised. And consistent with the order it identifies that it will classify the secured tax claim of the taxing authority as to the Wildewood Apartments. It treats the secured claim of Palmetto as to Wildewood. It also identifies what is a second mortgage on that property as a separate class and that it treats the general unsecured creditors of the Wildewood Apartments separately.

And the importance of that is, and, and consistent with the, the single-asset order, is that the unsecured creditors of the former Wildewood are paid out of the operations of Wildewood. There's no commingling. There's no pooling of assets, which is an objection that I've seen and we believe that's consistent with this Court's order.

Now I think it's really important that we address two issues that have been raised by three creditors and that is that the single-asset order required the debtors to file ten separate plans. And second, the single-asset order, according to a handful of creditors, also required the debtors to have no less than ten impaired classes, accept the plan in order to cram down the plan over their objection. Those are the arguments.

And there are two problems with that and like I said,

they were listed in the brief, but I'll, I'll go into some detail in them. Factually, that's not what happened. That's not what was requested. Palmetto Bank was leading the charge at this early hearing. They never requested either of those two things. I think the record is pretty clear on that. We submitted the transcript from that hearing. These things were never argued.

And second, and more fundamentally, is that not only were they not argued, this is not something that the Court ruled, nor could it rule. I think it was very clear what the Code says in Section 1129, 1129(a)(10), is that the debtor needs one impaired class of creditors to confirm a plan over the objection in a cramdown situation under 1129. That's the first argument.

And the second is under 1129(c) the Court can only confirm one plan. It's clear and the relief that they're requesting flies very much in the face of what 1129 says and Fourth Circuit law is very clear on this point. And there was a case coming out of the A. H. Robins bankruptcy. It's called Mabey. In that case -- I'll try to be brief -- but the debtors filed a motion seeking to establish a trust fund for the potential claimants in that case. At the time this motion was pending a plan had been filed but had not been confirmed. Claims allowance, objections and so forth had not been handled or heard and the district court allowed the trust fund and on

appeal the Fourth Circuit said that by allowing this trust fund under the Court's Section 105 powers it had expressly, essentially had expressly rewritten specific sections of the Bankruptcy Code under 1129, those dealing with how unsecured creditors are supposed to be paid and they're supposed to be paid pursuant to a confirmed plan.

And I think that is precisely what three creditors are arguing in this case and no one else. And I think what's, what's interesting is that only three people are going to argue that point and there are other many similarly situated creditors that aren't. Mr. Pearce has been involved in this case. He's never represented to me that that was his take on the order, nor has he negotiated that way. Mr. Fletcher has been involved in this case. He's similarly situated. He has never taken that position with me. Mr. Henderson is here. He is also similarly situated and he does not believe that's what the Court says or what the law provides. And what I expect to hear is that the pre-petition rollup was just so fundamentally unfair that it's going to, under our interpretation, allow the debtors to confirm a cramdown plan, for instance, as against Palmetto, with classes of claims that they had no business with prepetition. And that is just fundamentally unfair, according to Palmetto and to others.

And if I could approach the bench, Your Honor?

Ms. Beard, I expect that -- I apologize for that.

And, Your Honor, I submit to you what we've marked as Debtors' Exhibits 2 and 3 for demonstrative purposes. Exhibit 2 summarizes the, essentially, the loan history between the Farmers and Palmetto Bank. If you look on the left-hand column, it just identifies -- primarily we're dealing with the loans on the real estate -- and it identifies them by property, who the obligor was, who the guarantors were prepetition. And if you just look at the first line you, you look at, at Wildewood Apartments of Spartanburg. The obligor on that note prepetition was Wildewood Apartments and the guarantors were Josh and Ray Farmer and Two Mile Properties. With respect to Meadow Green, the same thing; with respect to East Ridge, the same thing; and with respect to the other two properties, Addison Townhomes and the office and warehouse, Two Mile was the primary obligor and the Farmers were the guarantors on those loans.

Now what the sum total of that is is identified in Chart 3, which I've handed up. It shows that these were not treated as separate by Palmetto Bank. And frankly, there were cross-guaranties all over the place. In fact, Two Mile Properties was a guarantor on all of the loans to the separate entities being Wildewood, Meadow Green, and East Ridge, the Farmers were individual guarantors on all of these loans, and the practical effect of it is that Palmetto treated this as an enterprise. They required the guaranties of, of the other

enterprises and, for instance, they would have been and are a creditor of Two Mile Properties with respect to Wildewood, Meadow Green, and East Ridge. And the fact of the matter is they could be crammed down with people they don't have a so-called relationship with because they would have been creditors in that specific bucket, anyway, absent the transfers.

And to further rebut this fairness argument, during the single-asset order -- and one of the, one of the objections I suspect we're going to hear is that we've held creditors hostage, and I don't think that's the case. I think the Court made it very clear that if you don't want to partake in this file your adversary proceeding. I think that was clear. It was stated in the order. It was stated during the hearing. In fact, it was threatened by certain attorneys during the hearing and it never happened.

So the fact that they had alternatives to this, if they believe they had a legitimate way out, they could have brought them and didn't. And keeping those in mind, Your Honor, I would --

May I approach the bench one last time?

THE COURT: Yes.

MR. HOUSTON: Your Honor, I figured the easiest way to do this in dealing with objections and so forth is to prepare a chart. We've done it in other cases and it seems like a, a good way to at least organize things. And Exhibit 4 that I've

submitted is an outline of certain objections and if I could briefly run through these just to see how I think we should handle these and announce certain amendments, I think that's probably a good way to do it.

And I'd like to lead off with the Tomblin objection that was filed by Mr. Pinkston, I believe, Monday. And the reason I think it's important to start with his is his is the most consistent with the scope of what a disclosure statement hearing's supposed to be in that he's requesting additional information to know whether he can and should vote on the plan. And from there I'd like to just sort of follow in order.

The Tomblin objection, the first objection raised is that the definition of Effective Date is vague and ambiguous. With respect to that objection, I think the, that objection should be overruled and the reason being is that in the plan, which is attached as an exhibit to the disclosure statement, specifically Articles 1, Section 1.44, and Article 11, Section 1.2, specifically defines what the term Effective Date is and that is it is the business day after which the confirmation order becomes final. I mean, there's no specific way for me to tell you that date is going to be -- or anyone -- that that date's going to be January 20th, or February 30th, or -- there's not a February 30th -- but maybe March 1st, though, or anything like that.

The second objection is that the disclosure statement

fails to estimate allowed administrative expenses. The debtors are going to amend Exhibit B to the disclosure statement to reflect that objection.

The next objection is the disclosure statement fails to provide estimates as to the amounts due to each class of claims. Likewise, we're going to amend the exhibits to the disclosure statement to reflect that.

The disclosure statement fails to anticipate the anticipated payments to Tomblin and fails to explain plan treatment. Again, we're going to amend and provide estimates they requested.

The last two deal with additional information regarding feasibility. We're going to amend and provide certain schedules showing projections for the properties of the individual debtors essentially over the next year and projected over the life of the plan.

With that in mind, I turn to a couple of objections that were filed, World Omni and Land Rover, both of which were objections as to the valuation of certain vehicles. I think they're actually valuation and/or confirmation issues rather than disclosure issues.

I talked to Ms. Ogburn yesterday, I believe, and she said that she would agree to deal with that in connection with the valuation hearing. I know somebody from her office is here today. He can speak to that, but that was my understanding as

to what the understanding was.

THE COURT: You all all right with that?

MR. NICHOLS: Yes, Your Honor. With respect to World Omni and Land Rover, I understand there's going to be a valuation hearing; that you're going to, in fact, file that motion. So this could be done with at that time.

THE COURT: Okay. All right.

MR. HOUSTON: That's right.

With respect to No. 4, Citibank, their objection essentially was the classification of Classes 2 and 10, which is on the personal residences of both sets of Farmers, violated the anti-modification provision. Initially, that's a confirmation objection.

Second, I don't believe it actually does. I think it actually is pretty clear that they are going to, to the extent they have an allowed claim with respect to those homes, that those allowed claims would not be modified, arrearages would be caught up, and I believe that the section of the Code is, is designed to operate much like a Chapter 13 is where the debtors pay their house payments going forward and they catch up arrearages through the plan. And I think that's what it does.

As it relates to disclosure, I think it's disclosed that there was a lawsuit that's going to be, and I think, in fact, it was filed yesterday with respect to those loans. I think it fully discloses that in the plan, which is attached to

the disclosure statement, fully addresses disputed claims and it's laid out in great detail in Article 7.

Moving along to the Palmetto objection, the first objection they raise is the plan and disclosure statement blatantly disregards the single-asset order. For the reasons I said before, I think that should be overruled.

The next objection is the plan is non-confirmable because it may improperly designate unimpaired classes as impaired. Same objection. I, I think it should be addressed at confirmation, not disclosure. I think what Palmetto is trying to do is get discovery to support some theory that it has that certain claims, for instance, tax claims, have been impaired when, in fact, they are -- when, in fact, they are not impaired. I think that's their position. That is a, that is a confirmation issue, not a disclosure issue.

There is one point to make there that was raised, is that there was an agreement that the debtors with respect to Addison Townhomes would pay Palmetto for paying off the tax claims. That's right. I mean, we're -- that needs to be amended in the plan. We're going to add a provision, a claim, in there, a class of claims, that says they will be treated as under 1129(a)(9)(D), I believe, which, which deals with secured tax claims. That was an omission on my part.

The next objection they raise, the plan is non-confirmable because it improperly classifies claims in

violation of 1122. Essentially, a gerrymandering objection. We would say the same thing. This is a confirmation fight.

To address one point, though, or I guess two, is Palmetto claims it doesn't have adequate information as to how the unsecured deficiency portion of it will be treated and it also claims that the second mortgage holders, who are out of the money, are improperly classified.

With respect to the first, we can add a provision in the disclosure statement and the plan that says unsecured portion will be treated in the unsecured pool for that bucket. That's not a problem, and I think that by operation of law that's right.

With respect to the, the second mortgage holders, there've been no valuation hearings. We're not really sure they're out of the money. In terms of plan revisions, we can add a provision in there that says something to the effect of, to the extent the second mortgage holder, which is Harbour Finance, I believe, on some of these notes, or on some of these properties, to the extent they are fully undersecured, that their claim will be treated in the unsecured portion of that bucket and that class, whatever it might be, in that case will not be considered in confirming the plan. I think that's, I think that's a reasonable way to do it.

The next objection raised is the plan is not confirmable under 1129(a)(3) because it was not proposed in

good faith. For the reasons we mentioned before, I think this is a confirmation fight and I think it's also based on what we believe to be Palmetto's erroneous interpretation of the single-asset order.

The next objection, the plan is non-confirmable under 1129(b) because it is not fair and equitable. Essentially, the same objection. It's a confirmation fight. I think it's also based on the erroneous assumption the absolute priority rule applies in individual 11 cases, which it does not.

The next objection is that the plan is non-confirmable under Section 1129(a)(11) because it is not feasible. Again, I think this is a confirmation objection.

And I'd also at this point like to announce a couple of amendments that I'm going to make with respect to Palmetto specifically as it relates to feasibility and otherwise.

And the first thing is -- and maybe it wasn't clear from the order -- we're going to add a provision in the plan and it can be reflected in the disclosure statement. It's essentially a drop-dead type provision, that if the debtors post confirmation fail to make a payment they will agree to friendly foreclosure. They'll waive notice and so forth. You know, there might have to be some procedures in there for how this actually gets before the Court, if that's disputed. But to the extent there's not a payment made timely and they haven't cured it within 30 days, we'd like to add that

provision in there.

And also with respect to Palmetto, Palmetto, it's our understanding, that they're marketing these notes for resale and I think we're going to add a provision in the plan and disclosure statement that provides them a six-month marketing period that if they can sell these within six months they'll have automatic relief, or the purchaser will have automatic relief from the confirmation order, that they can essentially foreclose or that the property will be tendered to them. It's something we can work out, but that's the concept behind it.

Moving along, there was an objection filed by First National Bank of the South. The first objection is the lack of adequate information. For the reasons I mentioned with Tomblin, we're going to, we're going to provide that information in an amendment.

The next objection is the disclosure statement and plan violate the single-asset order. Again, this is the same argument we addressed before and I believe that should be overruled.

The plan is not fair and equitable to all classes and violates the absolute priority rule. I think this has already been addressed before, and I won't repeat myself. I think that should be overruled.

I would point out, though, that one of the objections in there is that we're failing to allow First National Bank of

the South to vote on the plan or receive a distribution. It's not me. It's Bankruptcy Rule 3003, which states they can't vote or receive a distribution if they haven't filed a proof of claim. They haven't. I understand they filed a motion seeking to deem certain filings as the informal proof of claim or to amend it. There's a hearing on that and I think the disclosure statement and the, and the plan can be amended pending the resolution of that.

The final -- or there's two more objections by First National Bank of the South. The plan is not proposed in good faith. Again, this is a confirmation objection and an objection based on the single-asset order. I think they should be overruled.

Similarly, their last objection, the plan is not feasible. Confirmation objection based on interpretation of the single-asset order. As I mentioned before, though, we will provide them additional information, to the extent they can determine that, to the extent they need to determine whether it's feasible or not.

The seventh and eighth objections filed by 1230 Overbrook Holdings, CBA-Mezzanine Capital Finance, and U.S. Bank were both filed by Mr. Pulliam, so I'll address them together. They were essentially the same objection. The disclosure statement violates the single-asset order. For the reasons we mentioned before, we will -- I think that should be

overruled.

With respect to one point, there's a point made by Mr. Pulliam that there's only one distribution reserve and it indicates that there's a pooling of assets. That's not the case. I agree that the plan says that. We'll amend it to reflect that there are separate distribution reserves, separate disputed claims reserves on a POD level, as I'll call it.

The next objection is the disclosure statement does not contain adequate information. For the reasons I discussed in connection with the Tomblin objections, we're going to amend to provide that information.

The amended plan is not confirmable on its face. In the first instance, this is a confirmation objection.

The second objection they raised is absolute priority rule. For the reasons we mentioned before, I don't believe that actually applies.

And finally, as it relates to amendments, like I said before, we're going to amend to give them additional information.

So that's what I have on this and the way I'm proposing to handle this is -- obviously, you want to hear from everyone else first -- but I think we should take, probably, a couple weeks to make this determination and reconvene -- I know the holidays, it might be a little inconvenient -- reconvene sometime in early January where we make these changes and at

that point the Court should approve the disclosure statement and the disclosure statement should go out for a vote.

Thank you, Your Honor.

THE COURT: Thank you.

Who wants to go next?

Mr. Esser.

MR. ESSER: Your Honor, as Norton's on Bankruptcy Law says the hearing on the disclosure statement is one of the most important procedural hearings that occur in a Chapter 11 bankruptcy case. And that certainly is true in this one.

There were essentially two primary issues to address with the Court. One that had to do with the prior SAR order, the absolute priority rule, basically legal issues. The second had to do with the lack of adequate information in the disclosure statement. As we stand here today, the, the debtors' counsel has said they're going to amend, I guess essentially has admitted that there are a lot of lack of adequate information 'cause they're going to amend. I didn't count those up, but there were probably 15 or 20 different ways they're going to amend their disclosure statement to provide further information.

Just very briefly, the one that I didn't hear them address had to do with the treatment of tax claims. And with regard to each one of the tax claims involved, they have this optional treatment, which they get to opt. It's either pay it

in full within, either on or within 90 days of the effective date with, in full in cash, or pay it out over five years. Well, there's no way to determine looking at the disclosure statement if that is an option for the debtor, whether or not the, that class is impaired or not.

So we don't think that that's been addressed. We think the debtor needs to make a decision. Either it's paying it in full in cash, then it's not impaired, or it's paying it over five years and it is impaired and at least that way the, those classes know and everybody knows whether they get to vote and what happens with them.

The primary thing on, Your Honor, today has to do with your prior ruling under the SAR order and also, the issue of the absolute priority rule. And it's -- it'd be a little bit hard for me to overemphasize how important this decision in this case is. This is -- this ruling is not going to be limited to this case, the ruling of the Court with regard to the SAR order and absolute priority. This essentially, Your Honor, is a test case, which creative debtors' counsel have come up with to push the boundaries of the law and to see if that's something they can do.

Now let's look back just for a minute at the facts that we had. You have a situation in which you have sophisticated debtors, a bankruptcy attorney, and, and then his wife is also an attorney. They over a period of years set up

separate corporate entities to own property. Most of, a majority of them were set up as single purpose, single-asset real estate entities. They used all the advantages of a corporate form, shielding themselves from liability and all the other advantages that they get that went along with that. They kept them separate. There is no testimony that they commingled assets one to the other, that they didn't -- they had separate taxes, they had separate accounting, and all of these things were very clearly kept separate. In fact, after Your Honor ordered in the SAR order that they file separate schedules of creditors and assets, they had no problem in doing that and producing it in a very short order.

They get themselves into financial difficulty. At that point there is no contest that the properties lacked, that the debtors lacked equity in the vast majority of the properties. We heard Mr. Farmer testify under oath about that on the first day. They got themselves in -- the lenders who had loans on the various properties started to exercise their default remedies. There have been some foreclosures, a receivership, etc. There was a foreclosure sale pending.

What the debtors did is they looked at this bundle of assets and liabilities that they had and they said, "Well, shoot. If we file separate bankruptcy cases, there's no way that we can confirm a plan because of the large amount of unsecured debt that the secured lenders have and the single-

asset rules and the fact if it's all in a silo and if we file a bankruptcy we know what the test is for trying to get substantive consolidation." I quoted that. That's the Third Circuit's opinion in the Owens-Corning case. The debtors would have to prove that they're, prepetition they disregarded separatedness so significantly their creditors relied on the breakdown of entity borders and treated them as one legal entity, or postpetition their assets and liabilities are so scrambled that separating them is prohibitive and hurts all creditors.

So the debtors looked at that and they clearly knew that postpetition the moment they filed the bankruptcy petition they, they had no chance of getting substantive consolidation. They've never operated that way. The lenders had relied upon them being separate assets, separate single-asset real estate cases. So what you had is a situation where they said, "Well, let's" -- "we want to not only substantively consolidate, but we want to avoid this absolute priority rule that applies in corporate cases so that we can hang on to these assets. We can achieve a purpose which Congress said is impermissible, that is, that an equity holder of a corporate entity retains equity when all of the creditors have not been paid 100 percent in full, first."

So what they did is they did these pre-petition transfers. Virtually on the eve of bankruptcy they signed a

couple of papers and said, "Ha-ha. We're going to put everything into our name as the personal guarantors. We don't care 'cause we're already on the hook as guarantors and we'll get rid of these entities and we'll move all and try to cram all of the creditors down. Now we have a few days before the bankruptcy. Not only achieve a substantive consolidation, we've also managed to get away and avoid the absolute priority rule."

Well, Your Honor, that is simply impermissible. It's an abuse of the bankruptcy process. I think it's very clear in the D.C. Circuit case that I've quoted to the Court in my papers a couple of times where the D. C. Circuit upheld the district court who said on the, on the eve of bankruptcy you cannot avoid the bankruptcy process by simply transferring entities over to another place.

Your Honor, if the Court were to allow that to happen literally every bankrupt, debtors' bankruptcy attorney in the state who gets a client in on which the principals of a company have guaranteed the debt, they would say, "We're going to use this strategy. I mean, it would be almost malpractice not to. Just go ahead and transfer all the assets into the guarantor's name, file for the guarantor principal. We've avoided the absolute priority rule. We've avoided any kinds of issues about substantive consolidation and now we can move off into the sunset."

Your Honor, it would absolutely open the floodgates to an abuse of the bankruptcy system, but Your Honor specifically addressed the very issue that we're on here today. Seven months ago in this case -- and frankly, I, I find it disingenuous the argument that opposing counsel is making because the Court's prior order on this is so absolutely and abundantly clear. And I'll quote a couple of the statements from that order.

Your Honor, you'll remember that Palmetto and all the other creditors came in here. We were fired up and mad about these transfers happening, right? We wanted them set aside and Palmetto even made a big argument about how they were fraudulent transfers and set, to be set aside so that the substantive and procedural rights of Palmetto guaranteed by Congress and the Bankruptcy Code would be upheld. And the arguments were made to this Court and the Court entered an order and among the things the Court held in the SAR order were these:

> "The Court finds that on these facts it is appropriate to treat the debtors' assets and liabilities as if the pre-petition transfers had not occurred and the entities' assets and liabilities were being administered in separate bankruptcy cases."

Your Honor, it's clear that in separate bankruptcy cases you cannot take the vote of a class of creditors, which

does not exist in that bankruptcy case, and use it to cram down a plan on a different bankruptcy case. The Court went on to say:

"Accordingly, to prevent a perceived abuse or avoidance of the bankruptcy system, the Court finds that the provisions of the Bankruptcy Code should apply to the assets owned by the entities prior to March 30, 2010 as if the subsequent transfers did not occur."

You basically held that you were going to, you were going to ignore those transfers. We're going to treat these, this case as if those transfers had never happened, all the assets are still owned by separate entities, and we're going to treat them separately.

"The Court's intention is to administer the present cases in such a way that it would be the same as if each of the entities and the debtors had filed separate bankruptcy petitions."

The Court went on to say it would require separate accounting, separate administration, and separate voting on any Chapter 11 plan of reorganization and then in the decredal Paragraph A the Court held:

"The administration of these proceedings shall be governed by the applicable provisions of the Bankruptcy Code as applied to the various assets and

liabilities as if the pre-petition transfers had not occurred and the entities' assets and liabilities were being administered in separate bankruptcy cases."

Your Honor, not only did you orally rule that from the bench, but then we went -- and I can tell you that this was one of the hot, most hotly contested orders that we had to present to the Court and debtors' counsel did a good job of trying to tone down or, or, you know, modify the language that the Court had used -- but the Court -- we went and submitted competing orders to the Court and this was the order that the Court, after reviewing the two competing orders, came upon and I printed out a copy of the e-mail where Mr. Houston presented his competing order and a number of these provisions, which I just read, were struck out. He didn't want those in this order.

So not only did Your Honor rule on it at the hearing, itself, you ruled on it a second time when we presented the competing orders.

Now Mr. Houston's made a big deal out of the fact that Palmetto never went ahead and filed an adversary proceeding to try to set aside the transfers as fraudulent transfers. Well, Your Honor, there was no point. You had already granted us all the relief that we wanted, which was to put us back in the same procedural and substantive rights that we had before the transfers occurred. In fact, the transcript at the hearing,

Your Honor essentially said just that. You said at the conclusion of the hearing, you said, "Well, you can" -- "the creditors can go ahead and file one." Excuse me. I'll just find that reference, Your Honor. Here it is: "You know, if" -- this is the Court:

> "You know, if you want to pursue, Palmetto or anybody else wants to pursue the fraudulent transfer issue, I think we need to do that by adversary proceeding and we'll deal with that as it comes up. I'm not sure as a practical matter that -- well, I will let you all decide about that -- but it would seem to me that you could -- the banks could pursue that and win that issue and then just be faced with 12 new bankruptcy filings.
>
> So I'll let you all think about the practical aspects of this. My intention is, though, is to try to administer the present case, as long as we have the present case, to try to administer it in such a way that it would be the same as if the cases had been filed as the LLC cases."

So Your Honor clearly said, granted all of the relief that Palmetto wanted. As I stated on the transcript then, we weren't looking for, to require the debtors to have to incur further additional administrative expenses by having separate -- go back, dismiss that case, have them file separate

cases, try to unwind the dissolutions of the LLCs, I mean, all these different things. We were fine. It was in bankruptcy. It was moving forward but what we wanted were the rights that we had as if they were treated as separate LLC cases and that is what Your Honor granted.

So clearly, there was no reason -- and Your Honor even said, "I'm not sure as a practical matter why you would do that. I, I granted you the relief that you wanted so no point in going ahead and filing a fraudulent transfer action." And Palmetto took Your Honor up on that.

Your Honor, we're now seven to eight months since that ruling. The Court's language that you used in the ruling is unambiguous. It's clear as can be and yet the debtors have continued -- this is the second time they filed a plan and disclosure statement. It's the second time they have clearly ignored the Court's directive to them that these are going to be treated as separately administered, separate voting, etc. I raised that as an objection in my objection to the disclosure statement, which I filed back in August of this year, and I've talked about it with Mr. Houston several times. What do you mean that doesn't mean that? Separate voting means separate voting. I mean, it's -- it means you take one bucket. It's a separate LLC case. The only creditors who get to vote are the creditors of that LLC, period. You can't cram down with some creditors from another bankruptcy case.

But that is, in fact, what the debtors are arguing to the Court that they can do and that is what we have now spent just enormous amounts of time, money, and everything else disputing. I think it is absolutely essential that today the Court make crystal clear to the parties its ruling that these, in fact, will be treated as set out in the SAR order. They will be treated as separate cases for each LLC and there will not be this cross-voting cramdown, which the debtors have attempted to do.

Your Honor, with regard to the absolute priority rule, that issue is directly before the Court today. I understand in the SAR order that the Court pushed on that issue for another date. I've got a number of cases, which I can hand up if you would like, all of which deal with disclosure statement hearings in which the court denied approval of the disclosure statement because the plan did not comply with the absolute priority rule.

So the issue about the absolute priority rule and its application is a disclosure statement hearing issue, not just a plan issue. And the reason for that is quite simple. Creditors need to be informed and have adequate knowledge going into a -- receive -- before they receive a ballot to know what the, what the context is within which they are voting. Now typically, it's not an issue. You can read the Bankruptcy Code and it says 1129 provisions apply and the absolute priority

rules apply with regard to corporate LLC cases. Because of this scheme that the debtors have put together of the pre-petition transfers, there is some question mark on that.

Your Honor, I would suggest to the Court that based upon the SAR order there is no conceivable logical or rational reason that the absolute priority rule does not apply. I mean, frankly, if the Court does not just, just go ahead and rule that the absolute priority rule applies and all of the normal LLC rules apply, etc., well, then we should go ahead and, and dismiss the case so, in fact, there are 12 or 10, however, 10 separate LLC cases that have to be filed so that we no longer have this question. But I think that's what the Court -- the -- what -- the resolution the Court crafted the last time. You didn't want to make them spend the additional administrative expense, but you wanted to, them to follow the law and to comply with the intentions of Congress and the Bankruptcy Code.

So for all of those reasons, Your Honor, obviously, the disclosure statement cannot be approved today. We already know that because they're going to go back and amend it, but I think the Court needs to make absolutely clear that not only the SAR order means what it says. There will not be voting across buckets or across LLCs or a cramdown across LLCs, but also that the absolute priority rule applies.

Thank you.

THE COURT: Do you want to address that, Mr. Houston?

MR. HOUSTON: Just very briefly.

And I think it all centers around one issue, whether it's the absolute priority rule, the single-asset order, the interpretation that Mr. Esser has, which requires us to have at least ten cramdown classes and have ten plans confirmed. It's not what I'm suggesting. It's what Congress has not only suggested but demanded, the way the court and the players in the bankruptcy case confirm a plan. It requires one impaired class under 1129(a)(10). The Court can only confirm one plan under 1129(c) and the result that Mr. Esser is advocating for flies clearly in the face of what Congress has dictated, not what I'm suggesting. And I think Fourth Circuit law and other where, every other court that I've seen commands against that.

And for those reasons I think the objection should be overruled.

Thank you.

THE COURT: Well, Mr. Esser correctly stated what my intention was when we set out here. I can see now that I probably should have just dismissed the case at the beginning as a bad faith filing, as evidenced by the pre-bankruptcy transfers and corporate shell game that resulted in what we had. I thought at the time that we could overlook that and administer the case as if that hadn't happened and that's what I intended to do and set out to do and I think that if we're

going to continue on with the case that's what we've got to do. Congress may not have intended ten separate confirmation orders. I'm pretty sure Congress didn't intend that a bankruptcy case like this probably go on, in the first place.

So it was something of an accommodation, administrative accommodation to the debtor to let it continue. It was not my intention at any time to let that administrative accommodation give any substantive advantage to the debtor or any disadvantage to the creditors.

So I think you've kind of got to go back to square one and if you want to proceed in the case that we've got, do so with separate pots with separate deals altogether and keeping them completely separate for voting purposes. I don't know if that's possible or not. At the beginning of the case I -- it's -- I mean, I, I wasn't thinking of today. I didn't have this in mind. If I'd thought this far ahead or known to do that, I might not have done what I did, but we've come this far with it. I guess it's worth seeing if we can't, can't get it through a case that could be confirmed, or at least teed up for a confirmation hearing. But I think that we've got to do so with something that's substantially different than what's been proposed today. So I don't know.

Do y'all want to say anything about what you think we ought to do and where we ought to go?

MR. ESSER: Your Honor, just for confirmation

purposes. You said there'll be separate pots with separate voting. Because we had -- because you've used the term "separate voting" before, to make clear --

THE COURT: Well, I mean, as if they were separate LLC cases. I, I think the, the case has to be treated with, like that. I think that the Rules, including the absolute priority rule, have got to apply like that, or else, or else the case should have been dismissed from the beginning. So that's --

Mr. Wright looks puzzled.

MR. WRIGHT: That's Mr. Wright's state of being.

THE COURT: Oh.

MR. WRIGHT: But what you're suggesting I think is essentially -- I forget however many entities there are -- 10 or 12 subplans under the --

THE COURT: I think that's --

MR. WRIGHT: -- one plan, at least letting the debtor make a stab at that.

THE COURT: I think that's what we've got to try to see if we can do.

MR. ESSER: To, to clarify then, when they, when they talk about subplans, each one rises or falls on its own. 'Cause it's set for a separate LLC.

THE COURT: I would think so, yeah.

MR. ESSER: So, I mean, it -- I don't -- I mean, if they're in the same document when you vote you vote on whatever

you've got a claim in, period, and that one needs to be confirmed. That -- so essentially, you end up with -- it may be in one document, but you end up with ten confirmation hearings?

THE COURT: Exactly.

MR. ESSER: Okay.

THE COURT: I, I think that's right.

MR. ESSER: And the ones that are --

THE COURT: And there may be some that can be confirmed and there may be some that can't.

MR. ESSER: And the ones that are corporate entities, the absolute priority rule applies.

THE COURT: I believe so.

MR. ESSER: On the individuals, it doesn't.

THE COURT As -- as if -- as if they were separate filings.

MR. WRIGHT: What do we do about the guaranty claims?

THE COURT: I have no idea.

MR. WRIGHT: I'm glad I'm not alone.

THE COURT: That's why y'all get the big bucks.

MR. WRIGHT: Understood.

How much --

So I think, in essence, you know, the order for today is that this amended, second amended disclosure statement is not approved. That's all that we're doing today,

Then --

THE COURT: I think that's --

MR. WRIGHT: -- we need how much time --

THE COURT: Yeah.

MR. WRIGHT: -- to file an amended --

THE COURT: I understand that's a --

MR. WRIGHT: -- plan and disclosure statement?

MR. HOUSTON: I mean, I would think a month, 30 days.

THE COURT: We have a hearing date on the 26th of January. That give you time?

MR. HOUSTON: That's fine.

MR. ESSER: I guess I can discuss with Mr. Houston, debtors' counsel, after the fact. I'm not sure if we need to go forward on valuation hearings on the 5th or 6th under the circumstances but --

MR. HOUSTON: We can talk about that when --

THE COURT: Let us know. We'll save those dates.

MR. HOUSTON: Right.

THE COURT: I'm not going to do anything else those days, so. Okay?

Mr. Pulliam.

MR. PULLIAM: Your Honor, there's one other procedural issue that I've noticed in looking at the claims.

Many creditors are filing one claim for several different properties. For example, on Spartanburg there's a

water company that's filed a 60,000 some odd thousand dollar claim for every property in Spartanburg.

I think, I think the debtor should, should be required to send a notice and the, the deadline for filing a proof of claim should be reopened up and a, a new deadline imposed so these creditors can file claims for individual cases instead of one claim for the entire Farmer case.

THE COURT: Let's let y'all talk about that.

MR. HOUSTON: Right. I think we should probably just discuss that amongst ourselves and maybe bring that up at the next hearing.

THE COURT: If you can figure out --

MR. HOUSTON: Right.

THE COURT: -- some way to do that, it'll be better than anything I could come up with right here. So we'll -- if you can't, then I'll try to come up with something, okay?

All right. Well, good luck. I realize it's a, it's a wrench in the gearbox, but let's see where you can go from here.

Thank you.

MR. WRIGHT: Thank you, Your Honor.

MR. ESSER: Thank you, Your Honor.

(Proceedings concluded at 10:43 a.m.)

CERTIFICATE

I, court approved transcriber, certify that the foregoing is a correct transcript from the official electronic sound recording of the proceedings in the above-entitled matter.

/s/ Janice Russell — December 21, 2010

Janice Russell, Transcriber — Date